

6. Thus, when Chameleon stated that the requested STA was necessary due to the loss of the Bay City site, it knowingly made a false statement of material fact with respect to the true status of its licensed broadcast facility at Bay City, Texas. Moreover, that false statement was made with the intent to deceive the Commission and cause it to issue the requested STA. Moreover, Chameleon continued in a systematic pattern of evasion with regard to the claimed loss of its site to shield its actions from the staff. In fact, Chameleon's evasive answers regarding the need for the STA commenced in the initial STA request and continued throughout the hearing itself. Chameleon's Werlinger's evasive answers and his overly literal interpretation of the Commission's Rules also evidence his indifference to policies and rules which, as an experienced broadcaster, he knew, should have known, or deliberately ignored after specific instruction and explanation by the staff. The Commission specified Issue 1 to determine whether Chameleon misrepresented or lacked candor to the Commission regarding the status of its license broadcast facility at Bay City, Texas, when requesting the grant of the STA on April 21, 1995. The record evidence establishes that Chameleon wilfully misrepresented that its currently authorized transmitter site had been lost. Accordingly, the Bureau submits that Issue 1 should be resolved adversely to Chameleon.

B. Existing Tower Issue

7. Under Issue (b), the Bureau was required to show that Chameleon lacked candor to the Commission regarding the construction of a tower at the Harris County site when it filed an amendment to its STA request on May 2, 1995. The findings demonstrate that Chameleon

lacked candor with regard to its claim that its STA operations were to be located on an "existing" broadcast tower. Chameleon's Werlinger was well aware of the Commission's policy not to authorize new construction on an STA. Whether or not he ultimately agreed with that policy or the logic underlying it, Werlinger attempted to demonstrate compliance with that policy. And in so doing, Werlinger was admittedly not candid by not disclosing that Chameleon's proposed operation would originate from a newly constructed tower, or that he was instrumental in the construction of that tower.

8. After Chameleon filed the April 21 STA request proposing the construction of a new tower, Werlinger learned that the Division would not grant the request because it proposed new construction. Werlinger thereafter failed to convince the Division staff to grant the STA request. Because he knew the Division would not grant the STA request as originally filed, the May 2, 1995, amendment to KFCC's STA request proposed operation from an "existing" tower at a slightly different location from that proposed in the original STA request. That amendment did not disclose that the tower was newly constructed, or that the newly constructed tower was the very tower it proposed to construct in the April 21 STA request, but which Chameleon knew the Division would not grant. In its response to the Letter of Inquiry, Chameleon stated that McClish built and owned the tower and that no funds were passed from Chameleon to McClish for the tower. Chameleon later admitted that it was "instrumental" in making arrangements for the construction of the tower. At hearing, Werlinger further admitted that he funded construction of the tower and that he later formally purchased the tower from McClish.

9. Specifically, the findings clearly demonstrate that without Werlinger, the tower would not have been built: Werlinger advised McClish of the need for the tower, and the fact that he could not be openly associated with it; Werlinger allowed it to be built on property he owned; Werlinger forgave debt owed by McClish in order for the tower to be built; and Werlinger later formally purchased the tower. Werlinger also admitted at hearing that if the Commission's staff demanded an existing tower in order for Chameleon to obtain the requested STA, he would make a tower exist. Chameleon was not forthcoming on these facts with the Division; in fact, the true and complete nature of Werlinger's involvement with the allegedly existing tower was not apparent until the submission of his direct testimony at hearing.

10. Thus, Chameleon knowingly lacked the requisite degree of candor when it failed to disclose the true facts surrounding the construction of a tower at the Harris County site when filing its amended STA request on May 2, 1995. Chameleon did not disclose any facts indicating that the tower in question was newly constructed or that Chameleon played an "instrumental" role in the construction of that tower. Chameleon did not disclose these material facts because Werlinger knew that the Division would not grant the requested STA if it proposed new construction. It is clear that Chameleon arranged for the construction of that tower in order to demonstrate compliance with the policy that STAs not be issued for new construction. Moreover, the findings demonstrate that Chameleon knowingly failed to disclose the true nature of the tower construction because Werlinger knew that disclosure of those true facts would indicate that Chameleon knowingly and purposely violated the

Commission's STA policy. Thus, Chameleon intended to deceive the Commission into issuing an STA he knew was inappropriate and attempted to evade the consequences of Werlinger's actions by deliberately concealing the true facts.

11. The Commission specified Issue 2 to determine whether Chameleon lacked candor to the Commission regarding the construction of a tower at the Harris County site when filing its amended STA request on May 2, 1995. The record evidence establishes that Chameleon wilfully failed to be candid with the Commission in this regard. Accordingly, the Bureau submits that Issue 2 should be resolved adversely to Chameleon.

C. Qualifications Issue

12. Under Issue (c), the Bureau was required to show that, in light of the evidence adduced under the previous issues, Chameleon does not possess the requisite qualifications to be or remain the licensee of KFCC. The findings demonstrate that Chameleon cannot be trusted to be forthright with the Commission, to abide by the Commission's rules and policies, or to otherwise comply with the responsibilities and obligations of a broadcast licensee. In addition to wilfully misrepresenting that its site had been lost and lacking candor regarding the specification of an "existing" tower for its proposed STA operation, Chameleon repeatedly failed to respond candidly to Commission inquiries on these matters. While it is conceivable that Chameleon's Werlinger may have obtained past authorizations mistakenly, or was not clear on the requirements for an STA, or "overlooked" certain staff assumptions which he

failed to correct, the Bureau submits that Werlinger, both personally and as the *de facto* operator of KFCC, routinely failed to be candid and forthright in submissions to the Commission in connection with the requested STA and in response to specific Commission inquiries. The Bureau submits that Werlinger was well aware of what he was doing in his attempt to relocate KFCC to Houston in advance of the necessary public comment and FCC consideration of the merits of such a move. In fact, it was his knowledge of FCC requirements that allowed him to run the gamut of being evasive (*i.e.*, claiming a "lost" site as the basis for an STA) or overly literal (*i.e.*, building a "non-broadcast" tower when he knew he could not construct a new "broadcast" tower), as necessary, in response to inquiries. That pattern began as early as when the STA was filed on April 21, 1995, and continued unabated through Werlinger's oral testimony at hearing.¹⁴

13. In its written submissions to the Commission, Chameleon purposely provided incomplete, incorrect and misleading information regarding the need for the STA, the "loss" of KFCC's authorized transmitter site, and the existence of a constructed tower for its proposed STA operation. These misrepresentations and/or lack of candor with regard to material facts continued in Chameleon's its written submissions and responses to Commission inquiries. In this regard, Chameleon had a duty to "fully describe the proposed operation and

¹⁴ In addition to failing to be forthright in statements to the Commission, Werlinger/Chameleon's indifference to Commission rules and policies and the responsibilities of broadcast licensees evidences a carelessness "so wanton, gross, and callous, and in total disregard of [its] obligations to the Commission, as to be equivalent to an affirmative and deliberate intent." *Golden Broadcasting Systems, Inc.*, 68 FCC 2d 1099, 1106 (1978), quoting *Tipton County Broadcasters*, 37 FCC 197, 219 (1963), *aff'd* 37 FCC 191 (1964).

the necessity for the requested STA." *See* Section 73.1635(a)(2). Even Chameleon's Werlinger conceded that he was not fully candid in this regard, and that he would have ultimately been better served by being forthright. Nevertheless, Chameleon's disingenuous statements, both orally and in writing, knowingly created impressions that it was aware of and in compliance with Commission policies when such was clearly not the case. The Commission's staff had no way of knowing the true facts regarding Chameleon's STA proposal on the face of the request and amendment, and did not ascertain such until further inquiry revealed that the grant of the STA was not warranted. Moreover, rather than being candid with the Commission at that time or during any subsequent inquiry during which any misunderstanding of rules or policy might have been clarified, Chameleon engaged in a deliberate pattern of evasiveness and deception. The Commission has a right to expect more from a licensee.

14. Moreover, Werlinger's statements that a licensee need only disclose those facts necessary for the grant of a Commission authorization evidence his fundamental misunderstanding of the obligations of a licensee to be completely forthright to the Commission. As is abundantly clear from the record, Chameleon further demonstrated at hearing that it cannot be trusted. Specifically, Chameleon's Werlinger continued to be evasive in his responses and explanations, and there is nothing to suggest that he yet understands the obligation of a licensee to be forthright with the Commission with regard to STAs in specific, and the Commission's rules and policies in general. Rather, Chameleon's Werlinger has demonstrated that he cannot be relied upon, but will instead do whatever it takes to

accomplish his objectives unfettered by any regulatory restraints.

15. The Commission specified Issue 3 to determine, in light of the evidence adduced under Issues 1 and 2, whether Chameleon possesses the requisite qualifications to be or remain the licensee of KFCC. The record evidence establishes that Chameleon wilfully and repeatedly misrepresented material facts and/or failed to be appropriately candid with the Commission, and that there is no assurance that Chameleon can be trusted to be forthright with the Commission in the future. Chameleon's submissions repeatedly reflect an inability to be completely forthcoming and a willingness to shade the truth, as well as a disturbing pattern of indifference, evasion or overly literal interpretation of the rules to suit its purposes. The record is also clear that Chameleon will do what it takes to achieve what it wants without regard to Commission rules or policies. In Chameleon's world, it is the staff's responsibility to decipher an application and then pose a myriad of questions to determine the *bona fides* of an application and any additional undisclosed relevant information to assure compliance with Commission rules and policies. Quite simply, there is nothing in the record to indicate that Chameleon either understands or can be expected to meet the burden of broadcast licensees to be forthcoming in their dealings with the Commission and to comply with its rules and policies. Accordingly, the Bureau submits that Issue 3 should be resolved adversely to Chameleon.

IV. Ultimate Conclusions

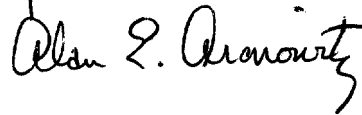
16. Accordingly, the record indicates and Bureau requests that Chameleon's license

for KFCC be revoked. If it is determined that revocation of Chameleon's license for KFCC is not warranted, the Bureau recommends that the maximum forfeiture of \$250,000 be imposed for its willful and/or repeated violations of Section 73.1015 of the Commission's Rules.

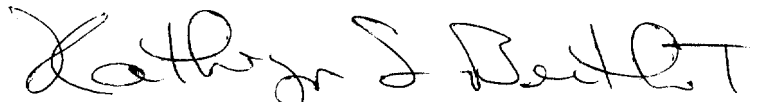
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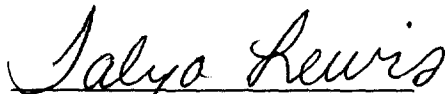
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May 2, 1997

CERTIFICATE OF SERVICE

Talya Lewis a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 2nd day of May 1997, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law**" to:

Chameleon Radio Corporation
c/o Don Werlinger
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Talya Lewis